



Advisory Opinion 09-001

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2008). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On December 9, 2008, the Information Policy Analysis Division (IPAD) received a letter dated same, from Mark Anfinson, an attorney representing the *Rochester Post-Bulletin*. In his letter, Mr. Anfinson asked the Commissioner to issue an advisory opinion regarding the newspaper's right to gain access to certain data from School District 535, Rochester.

IPAD, on behalf of the Commissioner, wrote to Romain Dallemand, Superintendent of the District, in response to Mr. Anfinson's request. The purposes of this letter, dated December 12, 2008, were to inform him of Mr. Anfinson's request and to ask him to provide information or support for the District's position. On January 5, 2009, IPAD received a response, dated same, from Daniel Sacco, an attorney representing the District.

A summary of the facts as Mr. Anfinson provided them is as follows. He wrote in his opinion request:

Earlier this year, [the District] terminated the employment of Cheryl Coryea, who at the time served as Director of Business Services. Shortly thereafter, a reporter for the newspaper requested certain information about the termination...When no satisfactory response was obtained from [the District], I was asked to contact Nancy Vollertsen, the District's attorney, and renew the request, which I did.

On March 7, 2008 Ms. Vollertsen responded as follows to the principal question I had posed to her:

- Q.** It appears that Ms. Coryea's employment was terminated by the district. Section 13.43, subd. 2 of the Data Practices Act specifies various information that would consequently be public at this point, including the specific reasons for the action taken, and all data documenting the basis for the action.
- A.** Ms. Coryea was employed at will by the district. Thus her employment could be terminated at any time for any or no reason. The information concerning her work performance is private data.

The newspaper did not pursue the matter further at that time. Recently, however [another Post-Bulletin reporter] again asked the District for information about Ms. Coryea's termination from employment. Ms. Vollertsen referred him to the previous exchanges.

Issue:

Based on Mr. Anfinson's opinion request, the Commissioner agreed to address the following issue:

Did School District 535 (Rochester) comply with Minnesota Statutes, Chapter 13, in response to a request for public data relating to the termination of a District employee?

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Section 13.03, subdivision 1.)

Minnesota Statutes, section 13.43, classifies data on individuals who are current or former employees of a government entity. Section 13.43, subdivision 2, lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private.

In a situation where someone has complained about an employee, the fact that a complaint exists and the status of the complaint are public. (Section 13.43, subdivision 2(a)(4).) If the government entity has taken disciplinary action and a final disposition has occurred, the final disposition together with the specific reasons for the action and data documenting the basis for the action are public. (Section 13.43, subdivision 2(a)(5).)

Section 13.43, subdivision 2(b), describes the point in time when a final disposition occurs. In his comments to the Commissioner, Mr. Sacco wrote:

Minn. Stat. § 13.43, Subd. 2(a) identifies the specific categories of personnel data that are public. None of these categories of personnel data include the basis for and documentation related to the termination of an at-will employee that does not involve a disciplinary action. The only information about the end of an employee's employment that is specifically identified as public is the last date of employment and, where applicable, the terms of an agreement settling an employment dispute....

...Here, there was no "disciplinary action." Rather, the District terminated Ms. Coryea's employment without a disciplinary action, which is its right because she was an at-will employee....

Chapter 13 makes no distinction between at will and other employees. Data that a government entity maintains about all of its employees are government data and are classified pursuant to section 13.43.

Mr. Saaco states that the District ended (terminated) Ms. Coryea's employment "without a disciplinary action." The Commissioner assumes Mr. Sacco means that the ending of Ms. Coryea's employment was not related to the District taking any disciplinary action against her

and that the “termination,” itself, was not disciplinary action. The District, therefore, would not have created or be maintaining data related to taking disciplinary action.

Assuming this is correct, it seems the District has no data responsive to the newspaper’s request.

In his opinion request, Mr. Anfinson wrote:

...While Ms. Coryea may indeed have been an at-will employee of the District, information we have obtained through informal means strongly suggests that she did not leave voluntarily, and that the decision to end her employment was prompted by dissatisfaction with her performance – in other words, it was not simply “for any or no reason.”

The Commissioner cannot resolve this factual dispute. If, though, the termination of Ms. Coryea’s employment with the District was related to a disciplinary action or was, in itself, disciplinary action, and there was a final disposition, the final disposition would be public as well as specific reasons for the action and data documenting the basis of the action.

Opinion:

Based on the facts and information provided, my opinion on the issue that Mr. Anfinson raised is as follows:


Assuming the termination of the individual’s employment with School District 535 (Rochester) was not related to a disciplinary action or was not, in itself, disciplinary action, and there was no final disposition, there are no data responsive to the newspaper’s request. In not providing any data, the District complied with Minnesota Statutes, Chapter 13.

Signed:



Dana B. Badgerow
Commissioner

Dated:



January 21, 2009